O/Cotton Control/51

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Legal Dept.
E. **BRANCH**

Subject:—

Opinion on the
Cotton Control Order, 1949

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C O N T E N T S

Legal Department File No. O.Cotton Control/51.

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Legal Department.

The question is whetherin respect of any of the following four transactions Daulatram Chatrumal could be prosecuted for having committed a breach of the relevant provisions of law. The four transactions are -

(1) Sale of 32 bales of cotton (Bengal Deshi) on 5-10-49 at Rs. 505/-

(2) Sale of 16 bales of cotton (Bengal Deshi) on 29-10-49 at Rs.505/-

(3) Sale of 90 bales of cotton (L.S.S.) on 2-8-49 at Rs.785/-

(4) Sale of 14 bales of cotton (American) on 19-9-49 at Rs.613/-

In the documents relating to the sales the above rates are shown and Daulatram's case is that the above rates were charged and the above type of cotton sold. If that is so no offence has been committted. The case against him however is that that is not so. The case against him is that in respect of the first three transactions although the type of cotton shown is correct, the price shown is not correct and he has really charged more, and in respect of the fourth transaction although the rate shown was the correct rate charged, the type of cotton shown is not correct but really Bengal Deshi was sold.

Now before discussing these transactions it would be relevant to point to the provisions of law in brief. The essential supplies (Temporary Powers) Act, 1946 (Act XXIV of 1946) regulates the production, supply, distribution of and trade and commerce in certain commodities. One of these commondities is cotton. Section 3 of the Act empower Government to issue orders for any of the above purposes. Under those powers the Central Government issued the Cotton Control Order, 1949 on 12th September 1949. That order among other things prohibited sale of cotton at rates other than the rates

rates fixed by the Textile Commissioner for different varieties. Under the power given by clause 6 of the Order, the Textile Commissioner issued a general order fixing the maximum and minimum prices of different varieties of Indian Cotton. In the present case we are concerned with two types of cotton, Bengal Deshi and L.S.S. For the former the maximum (ceiling) rate fixed was Rs.525/- (for the cotton of the season 1949-50). The L.S.S. cotton is of two qualities. R.G. (Roller Gin) and S.G. (Saw Gin). For the former the ceiling rate was Rs.765/- and for the latter Rs. 785/-. It appears that the third transaction is of L.S.S., S.G. (Rs.785/. type). If cotton was sold at rates other than those an offence was committed punishable under section 7 of Act XXIV of 1946.

Now it is apparent that if the rates shown by the documents as charged in the first three transactions (namely Rs.505/-. 505/- and 785/-) are correct no offence was committed. Similarly if the fourth transaction was of American cotton there was no offence, for transactions in that cotton were not regulated.

The case against Daulatram is that --

(1) For the first transaction he could have charged at best Rs,525/- which was the ceiling rate but he really charged at the rate of Rs.570/- and he made up the difference between 505/- and 570/- by adding the requisite extra weight to the real weight of cotton sold.

(2) For the second transaction again he could at best have charged Rs.525 /- but he really charged Rs.569/- and he made up the difference between 505/- and 569/- by entering into a bogus forward transaction and recovering from the purchaser a certain amount as his loss in the forward transaction.

(3).....

(3) For the third transaction he could have charged Rs.785/- but hereally charged Rs.811/- and he made up the difference between Rs.785/- and Rs.811/- by recovering godown and similer charges for a certain number of days.

(4) For the fourth transaction the cotton really sold being bengal Deshi he was entitled to charge Rs. 525/- bgt he described it as American and thus charged a higher rate.

There may be something in these allegations but the evidence in support of them is meagre. The evidence consists of the oral testimony of one T.K.Chabaria who was an employee of Daulatram Chaturmal and certain documents he produces. Now Chabaria's oral testimony will not have much value because he tried to blackmail Daulatram into paying him Rs.75000/- as commission on the threat that if he did not do so he would expose h him, but Daulatram did not succumb to that threat. The document produced by him are these.

In respect of the first transaction two weight notes (pages 19 and 21), one of the correct weight and the other of the inflated weight are prepared in the forms of Daulatram Chatrumal These are in the handwriting of one Chhatalal. There is nothing to show that these were the original. Chhatalal the weighmentclerk, does not support Chabaris. He states he prepared them at the instance of Chhabaria. As against this the purchasers who were examined by the investigating officer produced the weight note (p.101) which supports the case of Daulatram. Daulatram has produced his account books. The purchasers do not support Chabaria's case nor do the account books (Saudagiri book, cash book, ledger book) or documents (invoice and weight note) of the purchasers support Chabaria's case.

In respect of the second transaction, Chabaria has not produced any documents to support his contention. He has only produced correct copies of the transaction of sale of 16 bales and the transaction of forward sale. These copies are consiste with Daulatram's case. Chhabaria's whole case is based on an inference that payment of both these transactions took place

on the same day. The purchasers say they had these two separate transactions and the purchasers support it by their own account books and documents.

In respect of the third transaction Chhaberia has produced copies of bills given to the purchaser. These copies (page43,45) prove nothing. He has further produced weight notes (pages 47,49 and 51) to show that the weight was inflated by 4 cwt and 2 lbs. These weight notes are written by Chhotalal whose say is the same as in respect of the first transaction. The purchasers have produced the account books (Sauda book, daily book, ledger book and cash book) and documents (pages 111 to 125) which show that the godown and other charges had to be paid for having delayed the taking of delivery. The facts show that although the sale took place on 2nd August 1949, the delivery was taken partly on 26th August, 1949 and the balance on 30th September 1949.

In respect of the fourth transaction Chaberia produced two weight notes (pages 25 and 15). The former weight note is in respect of 27 bales of cotton and is dated 5th/11th march 1949 and the other is in respect of one bale of cotton dated 19th September 1949. The type of cotton is not described in these weight notes but both the lot and invoice number is identical. The rate of sale in the former is Rs.505/- and in the latter Rs.613/-. Chaberia's argument was that the former cotton was Bengal Deshi and as the latter was from the same lot it was also Bengal Deshi. The argument has no doubt some fascination but having regard to the length of time (six months) that had elapsed between the two transactions, and having regard to the account books and documents of the purchasers in respect of the one bale it was equally possible that the latter was not Bengal Deshi, but was American Cotton.

This being the position of facts disclosed in investigation it is not a good case for a prosecution.

There is besides a law point involved so far as the third transaction is concerned. The Defence of India Rules ceased

to have force on 30th September 1946. Therefore the cotton Control Order, 1945, which was issued under the Defence of India Rules also expired on that day. The India Act XXIV of 1946 did not, inspite of section 17 of the Act, keep alive the Control Order, 1945, in respect of Cotton because cotton was not at the time included as an essential commodity in section 2 of the Act. However, the Bombay Essential Commodities and Cattle (Control) Act, 1946 came into force as from 1st October 1946. That act also as originally enacted did not include cotton as an essential commodity in the Schedule. The item of cotton was included in the Schedule by a notification issued on 1st October 1946. The Bombay High Court has held that the notification did not revive the cotton Control Order, 1945. Therefore till 12th September 1949 when the Central Cotton Control Order was passed there was no law controlling the sale of cotton. That being so the third transaction did not constitute a breach of any law.

For these reasons a prosecution is not worthwhile in this case.

Id/-

Additional Secretary to Government.

U.R. to F.D., No. G-245, dated the 22nd June 1951.

S.I./25.7.56. 4c.